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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SEP 11 2008

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

T.E.P. RAITI

Uniform Issue List: 408.03-00; 72.20-00

Legend:

Taxpayer A	= ***** *****
Financial Advisor B	= *****
Insurance Company C	= *****
Financial Institution D	= *****
Financial Institution D-1	= *****
Financial Institution E	= *****
Account F	= ***** ***** ***** *****
Account G-1	= ***** *****
Account G-2	= ***** *****
Account H	= ***** *****
Amount 1	= *****
Amount 2	= *****

*****.

This is in response to a letter dated March 30, 2007, as supplemented by correspondence dated January 2, February 20, April 7, April 17, May 8, and May 9, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Financial Institution D (or by its "clearing house," Financial Institution D-1) which led to Amount 2 being deposited into non-IRA Account G-1.

Taxpayer A is the owner of Account F, an individual retirement arrangement ("IRA") maintained with Insurance Company C. As of *****, ****, Account F was valued at Amount 1.

Taxpayer A has a business relationship with Financial Advisor B who, until late **** or early ****, was associated with Financial Institution D. Advisor B is now affiliated with Financial Institution E.

On *****, ****, Insurance Company C issued a check for Amount 2 to Taxpayer A, by which Taxpayer A withdrew Amount 2 from IRA Account F. By application dated *****, ****, Taxpayer A opened IRA Account G-2 with Financial Institution D, using an application form provided by Financial Institution D-1, Financial Institution D's "clearing house." Taxpayer A then sent a check for Amount 2 to Financial Institution D-1. Taxpayer A's check was payable to the order of Financial Institution D, and should have been deposited into Account G-2, Taxpayer A's newly-established qualified IRA. However, on *****, ****, due to a clerical error, Amount 2 was deposited instead into Account G-1, a non-IRA brokerage account maintained by Taxpayer A with Financial Institution D, where it was applied to the purchase of equities.¹

When Financial Advisor B moved from Financial Institution D to Financial Institution E, Taxpayer A transferred the assets from Account G-1 to Account H at

¹By letter dated *****, ****, Financial Advisor B confirmed Taxpayer A's description of the events of *****, ****, specifically "...that the funds were deposited in error into a normal cash account, and they should have been deposited into an IRA account opened for him at [Financial Institution D-1]." In subsequent correspondence dated *****, ****, Financial Advisor B further stated that Taxpayer A intended that the equity purchase [that took place with the rollover funds in the non-IRA account] should have taken place within the IRA.

Financial Institution E. Account H also is a non-IRA brokerage account. Financial Institution E will establish an IRA account for Taxpayer A, if he receives a ruling granting him a waiver of the 60-day rollover requirement.

Taxpayer A discovered the error regarding Amount 2 when he received a Form 1099-R for Amount 2 from Insurance Company C, to be used in preparation of his **** income taxes. However, by the time Taxpayer A discovered the error, the period allowed under section 408(d)(3) of the Code for completion of a rollover of Amount 2 into another eligible retirement plan had expired. Amount 2 remains in a money market fund in Account H.

Based on the above facts and representations, you request rulings that: (1) the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the withdrawal of Amount 2 from IRA Account F; and (2) that Amount 2 will not be subject to additional tax under section 72(t) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt

such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Section 72(t) of the Code generally provides that unless an exception applies with respect to any taxpayer who receives an amount from a qualified retirement plan, including an IRA, prior to attaining age 59½, the taxpayer's tax for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to an error committed by Financial Advisor B, or Financial Institutions D or D-1, causing Amount 2 to be deposited into Account G-1, a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the withdrawal of Amount 2 from IRA Account F. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 2 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to

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such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code and will not be subject to the 10 percent additional tax on early distributions under section 72(t) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you wish to inquire about this ruling, please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

A handwritten signature in cursive script that reads "Carlton A. Watkins".

Carlton A. Watkins, Manager
Employee Plans Technical Group 1